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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,959	03/04/2002	Robert Levin	99-0002	7019

7590

03/19/2003

Mitchell Smith  
354 Buckingham St.  
St. Peters, MO 63376

EXAMINER

PIERCE, WILLIAM M

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 03/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/092,959

Applicant(s)

LEVIN, ROBERT

Examiner

William M Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

WILLIAM M. PIERCE  
PRIMARY EXAMINER

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**DETAILED ACTION*****Claim Rejections - 35 USC § 112***

Claims 1-16 are is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-16, "and/or" renders the scope of the claims indefinite. In claims 3 and 4, "the category of the sesquipedalian", in claims 4, 8 and 9, "the amount of help", in claim 5, "the translation", in claims 6 and 7, "the subject", in claim 9, "the progress of the player" and "the scoring status" lack a proper antecedent. In claim 4, the topic indicia provides "the category" yet in claim 6 it is recited to have the function of "identifying the subject". The terms used in the claims must be consistent such that their meaning can be clearly understood. Claims 14-16 are inapt in that they fail to set forth positive method steps. A physical action to be taken in the step of the method must be clearly articulated in the claim rather than a narrative abstract idea.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rein.

Claims 1 and 5, call for a sesquipedalian. From applicant's specification on pg. 1, lns 15-17 and ln. 22, such is defined to be a complex word, phrase, name, thing or title. As such, Rein shows a "thing" to decipher (as set forth on ln. 15 of spec.) at 22 of his game and an answer is given on the reverse side. To the extent that this "thing" could be a sesquipedalian within the narrowest meaning of the term is considered obvious since such is nothing more than a "long" word and trivia questions asking the meaning or derivation of words in general is well known. As to claims 2 and 7, figs. 7, 9 and 11 show clues. As to claims 3 and 6, topic indicia in trivia is shown by Rein's three deck cards A, B and C. The scoring indicia as called for by claims 4, 8 and 9 is shown in fig. 5. To have provided a player with a

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space on the card in order to write down his score would have been obvious in order to help keep the score of the game. Tallies of game scores are old. As to claim 10, Rein shows a game board 10, markers 18. Claims 14-16 are considered showing in the creation of the question and answer and providing clues. As set forth above, to have used long words such as a sesquipedalian is considered an obvious matter of design choice in theme.

1. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlegel.

As to claims 1-3, 5-7, 10, shown is a game board 10, cards in fig. 3, markers 22, dice 20, topic indicia #2, #3, #4 and #6. Trivia questions pertaining to the meaning, spelling and origins of words is old. To have used long words such as a sesquipedalian would have been obvious matter of design choice and a mere change the topic or theme of the game, which does not distinguish over the art of record. As to claim 11, providing the clues on the back of the card is considered a mere rearrangement of printed matter absent some showing of criticality showing a particular problem solved or unexpected results. As to claims 12 and 13, The scoring indicia as called for by claims 4, 8 and 9 is shown in fig. 5. To have provided a player with a space on the card in order to write down his score would have been obvious in order to help keep the score of the game. Tallies of game scores are old.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuhne show a trivia game.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address [bill.pierce@USPTO.gov](mailto:bill.pierce@USPTO.gov) or at telephone number (703) 308-3551.

Any inquiry not concerning the merits of the case such as **missing papers, copies, status or information** should be directed to Tech Center 3700 Customer Service Center at (703) 306-5648 where the fax number is (703) 308-7957 and the email is [Customerservice3700@uspto.gov](mailto:Customerservice3700@uspto.gov).

For **official fax** communications to be officially entered in the application the fax number is (703) 305-3579.

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For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.

  
WILLIAM M. PIERCE  
PRIMARY EXAMINER